

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

Docket No. 98-148-SP

In the Matter of

MARSHALLTOWN COMMUNITY COLLEGE, Student Financial Assistance Proceeding
Respondent.

PRCN: 199810714334

Appearances: Edward Jackson, Financial Aid Officer, Marshalltown Community College, Marshalltown, Iowa, for Respondent.

Denise Morelli, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Frank K. Krueger, Jr., Administrative Judge.

DECISION

The Respondent, Marshalltown Community College, participates in various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended. These programs are administered by the Student Financial Assistance Programs (SFAP), U.S. Department of Education. In November 1997, SFAP conducted a program review of Marshalltown's compliance with the requirements of the Title IV programs for the 1994/95, 1995/96, and 1996/97 award years. On September 30, 1998, SFAP issued a final program review determination finding that Marshalltown had not complied with a number of Title IV requirements and that Marshalltown was required to reimburse the Department \$87,193 in Title IV funds. SFAP also determined that Marshalltown was required to repay \$7,105 to the school's Federal Perkins Loan Fund.

Specifically, SFAP determined that Marshalltown maintained excess cash balances (Finding #1); that Marshalltown was unable to determine Title IV eligibility because it could not demonstrate that students receiving Title IV funds had attended at least one day of class (Finding # 2); [See footnote 1](#) that Marshalltown was not properly making student refunds since it did not have a method of determining a student's last day of attendance (Finding # 3); [See footnote 2](#) that Marshalltown's refund policy did not comply with the Title IV regulations and that a number of students were given Federal loans prematurely (Finding # 4); that Marshalltown was not calculating refunds properly (Finding # 5); that the promissory note for one student was not signed in violation of the standards for the William D. Ford Federal Direct Student Loan Program (Finding # 8); and that the electronic student aid report for one student was not signed (Finding # 9). The final program review determination assessed liability as follows:

Finding # 2: \$ 510 [See footnote 3](#)

Finding # 3 805

Finding # 4 78,115

Finding # 5 13

Finding # 8 4,000
Finding # 9 3,750
Total \$87,193

By letters dated November 3, 4, and 12, 1998, Marshalltown appealed all of the findings in the final program review determination, and submitted documentation satisfactory to SFAP concerning Finding # 8 and Finding # 9. *See* SFAP's brief, page 5, note 3. Although given the opportunity, Marshalltown did not submit any additional documents or argument in support of its position, but relied on its appeal letters and attachments.

With respect to Finding # 4, Marshalltown contends that six of the students (numbers 33, 57, 189, 258, 262, and 313) found by SFAP to have been prematurely awarded Title IV loans were actually awarded loans after the requisite 30 days, and submitted the appropriate documentation. In its brief, SFAP demonstrates that three of the six students (numbers 189, 262, and 313) actually withdrew prior to reaching the thirtieth day of enrollment and, for that reason, were not eligible. *See* SFAP brief, page 13. Marshalltown never responded to the SFAP brief. SFAP accepts the documentation for the other three students, thus reducing the liability determination for Finding # 4 by \$2,640.

With respect to the remainder of Finding # 4, and to the additional findings which remain in contention, Marshalltown makes no effort to dispute the SFAP factual determinations, but simply argues that the regulations are complex, that it made a good faith effort to comply, and that, consequently, the liabilities assessed under the findings should be waived. [See footnote 4](#) Under the procedural rules governing this proceeding, I cannot waive regulations. *See* 34 C.F.R. § 668.117(d) (1998). Even if I had that authority, I would not do so. The purpose of a program review is not to access punishment or state that an institution is doing a good or bad job, but simply to determine whether a participating school is in compliance with program requirements and to seek a return of all Title IV funds not properly allocated. Schools participating in the Title IV programs determine, in the first instance, which students are entitled to receive Federal grants and loans. The schools then disburse the funds as fiduciaries for the Federal government. As fiduciaries, participating schools are subject to the highest standard of care and diligence in administering the Title IV programs and accounting for the funds. *See* 34 C.F.R. § 668.82 (1998). The standards for the administration of the Title IV programs are established by Congress and refined by the Department under regulations adopted pursuant to rulemaking proceedings. Thus, if a school has not properly awarded Federal funds under these standards, it is not my place to state that the funds, although improperly awarded, should not be returned. I agree that the rules are complex. Notwithstanding, as fiduciaries, participating schools must ensure that they are totally familiar with the rules and properly award and account for the funds. In a program review appeal, such as the present case, the issue is not whether the participating school made a good faith effort to comply with the rules, but simply whether it complied. Therefore, except for the three students under Finding # 4, and for Findings # 8 and # 9, Marshalltown has not meet its burden of proving that the expenditures questioned by SFAP were proper and in accordance with program requirements. *See* 34 C.F.R. § 668.116(d) (1998).

ORDER

On the basis of the forgoing, it is hereby ORDERED that Marshalltown reimburse the U.S. Department of Education as follows:

Finding # 2 \$ 510
Finding # 3 \$ 805
Finding # 4 \$75,475
Finding # 5 \$ 13
Total \$76,805

It is FURTHER ORDERED that Marshalltown repay \$7,105 to the school's Federal Perkins Loan Fund, as specified in Finding # 4 of the final program review determination.

Frank K. Krueger, Jr.
Administrative Judge

Dated: May 27, 1999

SERVICE

A copy of the attached initial decision was sent to the following by certified mail, return receipt requested:

Edward Jackson, Financial Aid Officer
Marshalltown Community College
3700 South Center Street
Marshalltown, IA 50158

Denise Morelli, Esq.
Office of the General Counsel
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Washington, DC 20202-2110

Footnote: 1 Apparently, prior to the 1997/98 award year, Marshalltown only took class attendance during the first two weeks of a semester, which, of course would be sufficient to prove that students attended at least one day of class. However, this documentation was not maintained by the school, and the school has no other way of documenting class attendance.

Footnote: 2 A school participating in Title IV programs must determine whether a student is entitled to a refund if the student officially withdraws, drops out unofficially, or is expelled. Prior to the 1997/98 award year, Marshalltown apparently was unable to determine if students unofficially withdrew from school, but simply assumed that all students starting a semester finished the semester.

Footnote: 3 The liabilities were reduced for Findings # 2, # 3, and # 5 to avoid redundancy with Finding # 4.

Footnote: 4 Finding # 1 did not result in any liability determination, but simply in an admonition by the SFAP official that signed the determination letter that repeat violations could result in the initiation of adverse administrative action to impose a fine or the suspension, limitation, or termination of the school's eligibility to participate in the Title IV programs. Given the lack of any liability determination by SFAP, it is neither necessary nor appropriate that I consider the merits of this finding. If SFAP initiates adverse administrative action based in whole or in part on this finding, Marshalltown will be entitled to a full evidentiary hearing in which SFAP will have the burden of proof and Marshalltown will be allowed to raise its "good faith" defense.
